HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.267 of 2005

Between:

Devarapu Bijji Kumari and others … Appellants

And

Authorised Officer, Land Reforms Tribunal, Bandar

And others … Respondents

::JUDGMENT::

Counsel for the Appellants : Sri M.V. Suresh

Counsel for Respondents No.1

and 3: Government Pleader for Revenue

Counsel for respondent No.2: Smt. P. Saraswathi

March 16, 2006

Per G.S.Singhvi, C.J.

This is an appeal for setting aside order dated 4-1-2006 passed by the learned Single Judge whereby he dismissed the Writ Petition filed by the appellants for quashing the action of the respondents in surrendering the land in CC.No.1345/V/1975.

Sri Purushottam, the husband of appellant No.3 Smt. Suryadevara Annapurnamma, is said to have died on 10-2-1961. Prior to his death, Sri Purushottam and his son Gopala Rao are said to have partitioned the joint Hindu family property vide registered partition deed dated 20th February, 1955. Thereafter, Sri Purushottam is said to have executed a registered Will dated 19-6-1959 bequeathing about Ac.8.00 of land to his three grand daughters including appellant Nos.1 and 2 and Ac.5.83 cents to appellant No.3. The remaining property is said to have been bequeathed in favour of Gopala Rao. The latter died on 11-4-1965. About four days prior to his death, Gopala Rao is said to have executed Will dated 7-4-1965 whereby he bequeathed his share of the joint family property in favour of his daughters.

After commencement of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the 1973 Act'), respondent No.2 – Smt. Suryadevara Raja Rajeswari filed a declaration before the Authorised Officer, Bandar. The same was registered as C.C.No.1345/V/1975. The Authorised Officer is said to have passed some order dated 22-10-1983, which was set aside by the Land Reforms Appellate Tribunal, Krishna, Machilipatnam vide its order dated 31-3-1984 passed in L.R.A.No.41 of 1983 - Suryadevara Raja Rajeswari v. Authorised Officer, Land Reforms Tribunal, Bandar.

The appellant has alleged that during the pendency of CC.1345/V/1975, respondent No.2 filed a surrender statement before the Authorised Officer, which, if accepted, would prejudicially affect their right over the land.

The learned Single Judge noted that three days before filing of the writ petition under Article 226 of the Constitution of India, which was registered as Writ Petition No.6274 of 1996, the writ petitioners (appellants herein) had filed a petition before the Land Reforms Appellate Tribunal, but without pursuing that remedy, they invoked the jurisdiction of the High Court. In the opinion of the learned Single Judge, the grievance made by the writ petitioners was wholly misconceived and the only remedy, if any, available to them against the so-called surrender of land by respondent No.2 was to pursue the matter filed before the Appellate Tribunal. Paragraph 10 of the order passed by the learned Single Judge reads as under:-

> "10. The contention of the learned counsel for the petitioners is that since the respondents did not file counter affidavit traversing the allegations made in the affidavit of the third petitioner, the allegations in the affidavit of the third petitioner should be taken to be true. Failure to file a counter affidavit per se does not amount to admissions of the facts mentioned in the affidavit filed in support of the petition. Even assuming that the allegation in para 4 of the affidavit of the 3rd petitioner that an objection petition was filed before the appellate Tribunal and that the 2nd respondent did not take proper care in the conduct of the case before the Tribunals under the Act is true, as stated above, the remedy is not by way of filing a writ petition for the alleged failure of the 2nd respondent to protect their interest, because this Court while acting under Article 226 of the Constitution of India does not redress the grievance between private individuals. If either the 2nd respondent failed to protect the interest of the petitioners, or if the appellate Tribunal committed an error in computing the holding of the 2nd respondent, petitioners have to seek redressal of their grievance before the Tribunals concerned only but not in this Court and so this petition deserves to be dismissed with exemplary costs, and since no counter affidavit is filed by the 1st and 3rd respondents, I direct the petitioners to deposit Rs.5,000/- (Rupees Five Thousand only) to the credit of the Chief Justice Relief Fund for filing this vexatious petition……"

We have heard Sri M.V.Suresh, learned counsel for the appellants. In our opinion, the learned Single Judge did not commit any error by holding that the writ petitioners had failed to make out a case for exercise of the High Court's power under Article

226 of the Constitution of India. We approve the view taken by the learned Single Judge that the writ petition filed by the appellants was misconceived and the only remedy available to them was to pursue their cause before the Land Reforms Tribunal/Land Reforms Appellate Tribunal.

We are also of the view that the writ petition filed by the appellants should have been dismissed on the ground of lack of material particulars and failure of the appellants to produce any tangible evidence to show that respondent No.2 had taken action prejudicial to their rights and interest. For the reasons best known to them, the appellants have not placed before the Court the registered Wills allegedly executed by late Purushottam and late Gopala Rao bequeathing the properties to them. They have also not produced copy of the surrender statement filed by respondent No.2 before the Authorised Officer, and without going through these documents it is impossible for the Court to record a finding that respondent No.2 is acting in a manner detrimental to their rights and interest.

With the above observations, the appeal is dismissed.

As a sequel to the dismissal of the appeal, WAMP.Nos.555 and 556 of 2006 filed by the appellants are also dismissed.

G.S.SINGHVI, C.J.

16th March, 2006.

G.BHAVANI PRASAD, J.

svs/ARS/vtv